PROVINCIAL INSURANCE CO. LTD.

v.

YEE CHEE SWEE

FEDERAL COURT, KUALA LUMPUR
WAN SULEIMAN FJ
MOHD. AZMI FJ
HASHIM YEOP SANI FJ
[CIVIL APPEAL NO. 209/1983]
14 APRIL 1984

INSURANCE: *Principle of interpretation - Meaning of word "motorcycling" in policy - Rules of construction to be applied.*

The claimant was the administratix of the estate of the deceased who had died in a road accident while riding a motorcycle. Compensation of RM50,000 would be payable under the policy if cause of death was within the meaning of the policy. However, Exception 6 of the policy excluded death or disablement under the following circumstances:

> Death or disablement caused by or consequent upon participation in hunting, mountaineering, winter sports, racing of any kind, polo, football, motor-cycling or any form of diving in the sea.

The arbitrator held that the word "motor-cycling" in Exception 6 describes physical activities to which an unusual degree of risk of injury attaches. Counsel for the appellants at the High Court trial advocated the principle of interpretation to be applied should be that if the meaning of the words in the policy is reasonably clear it must be given full effect even though it operates harshly against the assured. Counsel for the respondent stated that the maxim *noscitur a sociis* should be applied to determine the true meaning of the word "motor-cycling" which was applied by the Trial Judge. The appellants appealed.

Held:

[1] In a claim of this nature, the claimant has to show that the injury has caused the death in the manner provided by the policy.

[2] A policy of insurance is basically subject to the same rules of construction as any other written contract. Words used in it must be given their plain, ordinary meaning but in the context of the policy looked at as a whole and subject to any special definitions contained in the policy.

[3] The word "participation" is important in reading Exception 6. As such the maxim *noscitur a sociis* should be applied in construing the word "motor-cycling" not in its ordinary sense but motor-cycling in some form of sports or exhibition or competition.

[Appeal dismissed with costs.]

Cases referred to:
Leong Luen Kiew & Anor. v. The New Zealand Insurance Co. Ltd. [1939] MLJ Rep 136
Jason v. British Traders' Insurance Co. Ltd. [1969] 1 Lloyd's Rep 281

Legislation referred to:
Arbitration Act 1952, s. 22

Other source referred to:
Macgillivary on Insurance Law, 5th Edn., p. 704

For the appellants - Dulip Singh; M/s. Dulip Singh & Co.
For the respondent - Wilfred Abraham; M/s. Shearn Delamore & Co.

JUDGMENT

Hashim Yeop Sani FJ:

This was a special case stated by the arbitrator for the decision of the High Court Judge under s. 22 of the Arbitration Act 1950 (revised 1972). The facts are not in dispute. The claimant was the administratix of the estate of the deceased who had died in a road accident while riding a motor-cycle. At the time of the accident there was in operation a Talisman policy No. T. 2701802/5 in favour of the deceased. A compensation amounting to a sum of RM50,000 would be due to be paid under the policy if the death was within the meaning of the policy. The policy excluded death or disablement caused under circumstances described in seven exception clauses stated in the policy. The relevant Exception in this case is exception 6 which reads as follows:

> Death or disablement caused by or consequent upon participation in hunting, mountaineering, winter sports, racing of any kind polo, football, motorcycling or any form of diving in the sea.

The question raised by the arbitrator for the decision of the Court was whether upon a true construction of the policy the word "motor-cycling" in Exception 6 of the policy relates to the use of motor-cycle for any purpose or only to motor-cycling undertaken as part of some sporting activity. Before the High Court Judge and before this Court Counsel for the insurance company, Mr. Dulip Singh, advocated for the principle of interpretation that if the meaning of the words in the policy is reasonably clear it must be given full effect even though it operates harshly against the assured, relying on *Macgillivary on Insurance Law* 5th Edn., p. 704. He also advocated that Exception 6 should be divided into two limbs for the purpose of construction which approach was however rejected by the Trial Judge. Counsel for the claimant, Mr. Wilfred Abraham, on the other hand advocated for the adoption of the maxim *noscitur a sociis* for the true meaning of the word "motor-cycling". Thus according to Counsel the meaning of the word "motor-cycling" has therefore to be ascertained by reference to the meaning of the words associated with it in the said Exception 6.

The arbitrator on the other hand found that the genus to be derived from the activities described in exception 6 is that they are "physical activities to which an unusual degree of risk of injury attaches."

In a claim of this nature it is for the claimant to show that the injury has caused the death in the manner provided by the policy. See *Leong Luen Kiew & Anor. v. The New Zealand Insurance Co. Ltd.* [1939] MLJ Rep 136. A policy of insurance is basically subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning but in the context of the policy looked at as a whole and subject to any special definitions contained in the policy - *Jason v. British Traders' Insurance Co. Ltd.* [1969] 1 Lloyd's Rep 281 p. 290.

Although the grammatical sense is not the sole or primary method of construing a policy it does in this case give a useful guide as to the intention of the parties. We agree with the learned Judge that the word "participation" is important in reading Exception 6. "Death or

disablement caused by or consequent upon participation in football" is easily understood but not "death or disablement caused by football". Applying the maxim *noscitur a sociis* to Exception 6 "motor-cycling" referred to in the exception must therefore be motor-cycling not undertaken in the ordinary sense but motor-cycling in some form of sports or exhibition or competition.

We accordingly dismissed the appeal with costs.

Also found at [1984] 2 CLJ 12